DOCUMENT RESUME

ED 209 761 EA 014 224

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TITLE	Implementation and Intervention Strategies: The Case of PL 94-142.
INSTITUTION	Stanford Univ., Calif. Inst. for Research on Educational Finance and Governance.
SPONS AGENCY	National Inst. of Education (ED), Washington, D.C.
REPORT NO	IFG-PR-81-A18
PUB DATE	Sep 81
GRANT	OB-NIE-G-80-0111
NOTE	40p.
AVAILABLE FROM	Institute for Research on Educational Finance and Governance, School of Education/CERAS Bldg., Stanford University, Stanford, CA 94305 ($1.00).
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	*Change Strategies; Compliance (Legal); Delivery Systems; Disabilities; Elementary Secondary Education; Federal Legislation; *Federal Regulation; Government School Relationship; Individualized Education Programs; *Intervention; Legal Problems; Mainstreaming; *Organizational Theories; Parent School Relationship; *Program Implementation; Sanctions
IDENTIFIERS	Education for All Handicapped Children Act

ABSTRACT

The notion of intervention strategies is introduced in this paper to explain why and when certain change efforts are successful. It is argued that the choice of control points and the selection of control linkages are determined by characteristics of the task in the implementing agency. Many implementation failures can be attributed to the selection of the wrong control point and the wrong linkage. Linkage refers to the kind of reporting required and the kind of positive or negative inducements used. Control points are selected as the relevant variable, whether implementation controls are mainly exercised on input, output, or process variables. Input controls relate to allocated funds and characteristics of the professionals and are associated with adaptive implementation. Output controls involve the implementer in saying something about what has been done and can either enlarge or reduce the implementer's discretion depending on the specificity of disclosure. Process controls are directed at internal behavior and are concerned with the way services or products are provided, thus reducing day-to-day discretion. This paper focuses on situations where the task does not always lend itself to routinization and where professional discretion is important. The implementation of the Education for All Handicapped Children Act of 1975 is selected to illustrate the unforeseen consequences of inappropriate intervention strategies.
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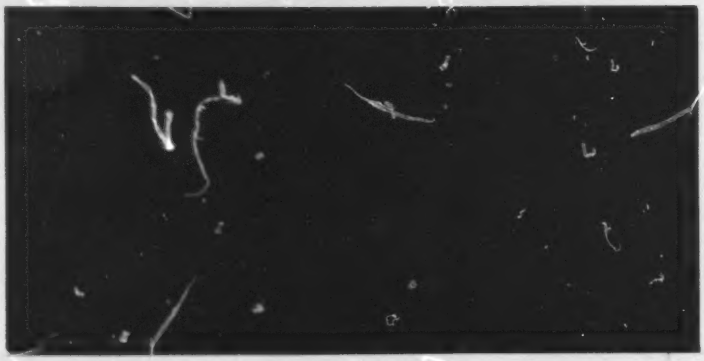

EA 014 224

Project Report No. 81-A18

IMPLEMENTATION AND INTERVENTION STRATEGIES: THE CASE OF PL 94-142

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September 1981

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This paper was prepared for the IFG Seminar on Law and Governance in Education, July 1981. The research for this report was supported by funds from the National Institute of Education (Grant No. OB-NIE-G-80-0111). The analyses and conclusions do not necessarily reflect the views or policies of this organization.

Acknowledgment

David Kirp has been a great help and has commented on several versions of this paper. I also wish to thank Eli Bower, Reginald Jones, and Christine Hassell who have knowledge of special education, and Paul Berman, Patricia Brown, Lee Cronbach, Judith Gruber, Robert Kagan and Martin Shapiro who heard and commented upon a previous version.

INSTITUTE FOR RESEARCH ON EDUCATIONAL
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Abstract

Federal intervention in education can enhance or hamper professional role playing. Generally, process controls reduce discretion and can therefore erode service quality. When innovations require considerable "learning how to do the job," input or output controls are preferable. The implementation of PL 94-142 is studied to show the consequences of excessive use of process controls.

In this paper we introduce the notion of intervention strategies to explain why and when certain change efforts are successful. For our purpose we have selected the Education For All Handicapped Children Act of 1975 (PL 94-142) to illustrate the unforeseen consequences of inappropriate intervention strategies. Since education, in general, and special education in particular relies heavily on professional competence for delivery of service, our discussion of intervention strategies focuses on the peculiarities of institutions where professional knowledge is important. What we have to say about special education applies equally to public health, research, the running of universities or even to companies using complex technologies.

An intervention strategy is the choice of linkage between two or more organizations in a loosely coupled system. Education and many other social sectors can be thought of as loosely coupled systems (Glassman 1973, Weick 1976) where many different organizations with different purposes, responsibilities and resources overlap amd impinge on each other. If we think of the governance of American education, we think of a complex mosaic where legislatures, the courts, local bodies, state and federal agencies deal with teacher unions, parents organizations, students and the general public, each involved in some partial aspect of education, each partially controlled or affected by other actors.

In a loosely coupled system transactions take place - for example courts make decisions, legislative mandates are enacted, federal agencies set rules for implementation, districts accept monies

and other inducements to initiate novel activities. Many of these transactions include a control element, i.e. when a district accepts monies to initiate a new program, the monies come along with a control package dictated by the legislative mandate or regulations of the implementing agencies.

Controls between semi-independent organizations are necessary to protect the purposes of donors and to facilitate implementation. Considerable attention has been given in the literature on the nature of controls and the kinds of slippage or even mutations that take place at the time of implementation. Berman stresses the difference between macro implementation which focuses on the federal to state to local transition and micro implementation which focuses on the peculiarities at project site level, and on the adaptation needed to fit the overall purpose in the local setting. (Berman 1978) Elmore carried the conceptualization one step further by differentiating between 1) a management model of implementation where the focus is on task specification, allocation and measurement to facilitate management controls; 2) a bureaucratic process model where implementation is conceived as the control of established routines and the reduction of site level discretion; 3) an organization development (OD) model where implementation is conceived as a process that results in greater consensus, more individual autonomy and commitment; and lastly 4) as conflict bargaining - implementation is conceived as the arrangements that allow the resolution of conflicts and the carrying out of necessary tasks. (Elmore 1978)

In contrast, Sabatier and Mazmanian attempt to focus exclusively on the management model to establish the conditions for effective policy implementation. They argue that any substantial departure from the status quo can only be achieved if 1) the program is based on a sound theory; 2) the statute or policy is unambiguous; 3) implementing agencies are properly managed and structured; 4) active and sufficient political support exists and 5) the program is carried out over time. (Sabatier and Mazmanian 1979). More recently Berman emphasizes again that success does not always depend on lack of ambiguity and precise orders. One can opt for programmed implementation (i.e., careful and explicit programming of implementation procedures) or adaptive implementation (i.e., reliance on adapting initial plans to unfolding events or decisions). The choice depends on the peculiarities of the policy situation or context:

> "The literature has sought to identify variables that account for the past decade's rather dismal implementation experiences. For example, the ambiguity and lack of clarity in policy objectives, the participation of too many actors in decision-making during implementation and the uncontrolled discretion of implementers have been cited as prominent reasons for implementaion problems. Yet it can be argued that ambiguity, participation, and discretion do not hurt but rather contribute to effective implementation. Why these inconsistent findings? The effects of ambiguity, participation and discretion (as well as many other variables) are contingent on their interaction with relatively fixed elements of the policy situation or context. . . " (Berman 1980, p. 207)

In this paper we seek to better understand how and when different intervention strategies are well suited or poorly adapted to different situations. We focus on situations where the task does not always lend itself to routinization and where professional discretion is important.

We select control points as the relevant variable. By control point we simply mean whether implementation controls are mainly exercised

on input, output, or process variables.

This paper argues that the choice of control points and the selection of control linkages is determined by characteristics of the task in the implementing agency. Some tasks can be controlled at outputs, others at process or inputs. Some can be controlled simultaneously or at all three. But many implementation failures or distortions can be attributed to the selection of the wrong control point and the wrong linkage.

The first part of this paper focuses on the concept of intervention strategies. It links characteristics of tasks with the choice of control points. It focuses on internal structure such as the system of reward and punishment that motivates implementers. It suggests where and when certain controls can be expected to succeed.

The second part of the paper uses the implementation of the federal law on the education of handicapped children (PL 94-142) to illustrate the argument.

A Few Definitions.

Intervention strategy: the choice of control points and linkages. Do you focus on the socialization of teachers? Training of parents? Budget? Procedures? Outputs or outcomes? Why?

Control point: is this intervention affecting input, process or output variables.

Choice of linkage: what kind of reporting and what kind of positive or negative inducements are used? Some linkages may be very

specific and entail the use of inspectors - other linkages may be vague and require no reporting. More importantly some linkages are based on positive inducements while others are based on negative sanctions.

Input controls: Since all organizations require input resources to survive control of inputs is probably the most effective way of controlling organizations. Hence the importance of the budgetary process in government and the relevance of the market place in the private sector. But budgets are not the only input control. The characteristics of the socialization of professionals may be far more important.

When input controls are used instead of process or output controls, considerable discretion is exercised by implementers. The relevant imagery is: "here are some resources, go ahead and do the job." Therefore in Berman's perspective we would tend to associate input controls with adaptive implementation.

Process controls: These are directed at internal behavior concerned with the way service or product are provided. They include orders dealing with specific instances or of routinized orders or rules applying to selected recurrent patterns of behavior. Health and safety standards in the workplace are typical process rules designed to protect both workers and clients. Process controls are used extensively in regulatory practice. They tend to reduce day-to-day discretion. The applicable imagery is: "do this job in the following manner, do not deviate from this procedure." Process controls are often used when an outside agency is attempting to advance goals which

while important to society are not a salient aspect of the overall objectives and activities of the implementer (for example affirmative action or environmental protection objectives). They necessarily imply some level of programmation.

Output/outcome controls: Output interventions are focused on characteristics of the product and service performed. Outputs are usually defined in terms of immediate organizational consequences, i.e., the output of a higher education institution may be a cohort of graduates with a diploma.

Outcome interventions focus on secondary effects of organizational outputs: i.e., if the output is a cohort of graduating seniors the outcome may be the percentage who find significant employment within a given period of time.

Implicit here, is the notion of disclosure. Output controls necessarily involve the implementer in saying something about what has been done. One question therefore, is to whom to disclose? To clients? To professions? To sponsors? To the public at large? The relevant imagery here is: "tell us what you have done so that we can decide whether to ask you to continue or do something else." Outputs are often linked to input resources. For example output information is used to generate input resources: "you achieved the goal, therefore we continue to fund you."

Output controls tend to be used in planning situations where there is concern that a large number of loosely connected organizations coordinate their efforts.

Output controls can either enlarge or reduce implementer's discretion depending on the specificity of disclosure. They therefore fall either in the adaptive or the programmatic category.

Implementation and Rewards or Punishments

Linkages based on transactions imply that rewards or punishments take place: for example when output controls are linked to inputs, we can describe a system of reward or punishments that is activated and brings about implementation; "you are not doing what we expected, we do not fund your program unless you change your ways."

If an intervention is to make a difference, if implementation is not trivial (it would take place in any case); social power has to be exercised. Power may emanate from very tangible threats (the enforcement model) or from positive inducements (reward model). Therefore in any implementation situation we can describe a system of reward and punishment that helps explain why implementation takes place: "they had to implement, the court ruling gave them no latitude", or "they knew it would be to their advantage to consent".

The system of reward and punishment consists of several distinct elements: the actual rewards or punishments, the criteria for their application, the officials who apply them (inspectors, peer evaluators, etc.), the sampling or measures on which performance is evaluated.

Implementation failures can always be attributed to the system of reward and punishment. If people do not implement, it usually means that for some reason or other they find advantage in not implementing. To be sure, there are other explanations--they may be ignorant of expectations or incapable of performing as wanted. But for our purpose

here, we will focus on the system of reward or punishment. (R & P)

Two principal cases interest us: The first is when implementation fails because the intervention is not linked to R & P: there is no way to determine compliance or there are no inducements or punishments for complying. The second is when the R & P is activated but it distorts behavior within the target organization. The criteria or measures of performance may be inadequate or the system of R & P generates defensive strategies that corrupt the purpose of the intervention. For example, teachers who are evaluated on their student performance on standardized tests may focus their teaching on how to take tests or corrupt test results by manipulating test conditions.

These problems become particularly significant in task situations that include a learning element. If implementers are punished when they attempt to learn how to do things differently, the experimental adaptive behavior required for implementation will gradually be extinguished. In other words, the system of R & P can also be the direct cause of implementation failures.

This is why the choice of control point and linkage is relevant. There are task situations that can be controlled and the existence and activation of the system of R & P does not create significant distortions. But in certain cases - as we shall now see - controls have to be limited if they are not to undo in practice what they are to achieve in theory.

Learning and Uncertainty

Let us arbitrarily divide the world of implementation into four categories: Either goals are specific and measurable or they are numerous and not easily measurable. Either the task is routine

or it requires a learning component. See Figure 1

Process

GOALS	routine	learning
specific measurable	electric generation	first men to moon
vague not measurable	post office	PL 94-142

* Figure 1

These categories are not exhaustive but they capture the relevant types of implementers. We want to show that different control points and linkages are appropriate to each of these categories:

--First, we have implementers with specific goals and a routine process: for example electric generation.

--Second, those with specific goals but the process includes a learning component: for example sending the first men to the moon.

--Third, those with vague, not easily measurable goals and a process requiring learning behavior: here we will include many aspects of the running of social sector institutions in health, education and welfare.

Implementers with specific goals and routine process are amenable to input, output and process controls, i.e., electric power

plants are controlled by inputs, process rules and electric generation output measures. Implementers with specific goals but needing a learning process are amenable to input and output controls, i.e., the scientists on the first men on the moon project respond directly to the success and failures of successive attempts to take off. Implementers with vague goals and a routine process are amenable to input and process controls. The post office responds to selected attempts to rationalize process and to input controls. No one is really looking at unforeseen or undesirable consequences of bulk mail flood. Implementers with vague goals and a process requiring learning behavior are only amenable to input controls. Many tasks in health, education or welfare cannot be controlled through output or process controls. They have to be controlled through input controls: for example, budgets or the socialization of professional staffs.

This last point is central to our discussion. Too often the design of legislation disregards control points. It is assumed that process controls or output controls can be utilized when in fact these introduce undesirable distortions and can even be a principal factor in implementation failure. As we shall see in the case of PL 94-142 process controls were instituted in task situations where they were not always desirable. Some of the goals of the legislation might have been better served if input controls had been used. The evidence suggests that the impact of unsuitable controls on service delivery is not negligible.

To be sure, this does not mean that social sector implementers are only amenable to input controls. Quite obviously there are tasks

or aspects of the implementation of programs that are amenable to output or process controls. For example, one can count students, patients, cases; one can establish criteria for admission, etc.. But the point to be made is that many dimensions of task performance are not amenable to such controls and each time they are used, inevitable distortions and unforeseen consequences result.

The choice of linkage is also relevant. In general individuals and organizations respond better to positive inducements than to negative sanctions. The latter always generate defensive strategies. These defensive strategies can become very expensive, time consuming, and actually make it that much more difficult to bring about change. Negative sanctions are best used in situations where 1) the goals to be achieved are precise, are easily measured and compliance can be determined and where 2) it is known that implementers can implement. Positive sanctions are preferable in situations where goals are vague, not easily measurable, compliance can only be partially evaluated and the learning process is important.

Why are Undesirable Controls Used?

Why, one might ask, are undesirable controls used? The principal factors are:

1) The drafters of legislation or the drafters of federal and state regulations are often preoccupied with their own programs whose objective and success is paramount to them and their agencies. They disregard and often do not care about the context in which the activity is to take place, either because they are unfamiliar with it or because they distrust distant and unknown implementers. Therefore they seek to invent foolproof controls.

2) If control is the objective, then obviously the combination of input, process and output controls is, in theory at least, the most foolproof. There is therefore a natural tendency in designing controls to overdesign and to assume that more control is always preferable.

3) Negative sanctions are easier to create than positive inducements simply because most negative sanctions cost less than most positive inducements. Also there exist institutions to punish--namely, the courts, the prisons etc., but surprisingly in our society, there does not exist similar institutions to reward.

4) Since negative sanctions tend to be easier to use with process controls it follows therefore that there exists another natural tendency to use process controls in preference to the others.

5) Input controls such as reliance on professional socialization are long term controls. They cannot be instituted overnight. Therefore there is a tendency to underplay professional controls in favor of short-term expedients. But the fundamental error is that not enough attention is given to professional socialization at a historical time when professional socialization may be far more important to the running of complex technological societies than we realize.

6) In short, erroneous control strategies may well be an important source of the general malaise and ineffectiveness prevailing in many social sectors. Teacher burnout is not

exclusively due to excessive and trivial paperwork but it is due to a large measure to the perceived arbitrary and inconsequential impact of control structures that do not fit the needs of clients, of those who deliver services and of the general public.

The Implementation of PL 94-142

PL 94-142 is in the input-process compliance mode. Budgetary inputs are tied to overall compliance with statutory provisions. The legislation culminated a decade of court and legislative interventions including seminal decisions in Pennsylvania, the District of Columbia and in California. (Kirp et al, 1974). The act was passed in 1975 and implemented in 1978. (Altschuld & Downhower 1980; Abeson & Zettel 1977; Ballard & Zettel 1977 and 1978, Jones et al, 1978; Schlecty & Turnbull 1978.)

The law, interestingly, has several distinct objectives reflecting the several major problems in special education which had led to earlier court interventions and previous legislation.

1) A first objective is to insure that every child needing special education has access to an appropriate education. School districts can no longer deny a responsibility for severely handicapped children. These, in the past, were often left to the vagaries of other agencies or to whatever help their parents could obtain. Districts are to identify children in or out of school who have been excluded from special education. They are to either provide supplementary aids and services (i.e., speech pathology, audiology, therapy, counseling, transportation, etc.), or in those instances when a district does not have facilities for a given disability,

the district is obligated to reimburse parents for private services. Cooperation between districts is also encouraged.

2) A second objective of the legislation is to insure that children are not arbitrarily assigned to special education. In the past, special education was sometimes used to stream certain minority children that were perceived, for one reason or another, to be a problem to conventional class room teachers. Thus, certain districts had very high enrollments of minorities in special education. The statute provides for fair assessment procedures (parental consent, nondescriminating assessment of disability, many types of assessments, interpretation of results by licensed expert teams)and an individualized education program for each child, to insure that children not be arbitrarily streamed in special education programs.

3) A third objective of the legislation is to reduce, as much as possible, the extent to which children are in special education. This is the notion of mainstreaming or least restrictive enrollment. In the past, once a child was assigned to special education the child tended to remain there. Moreover, many children who might benefit from conventional classroom exposure were denied access. Special education classes were separate and tightly compartmentalized away from conventional classrooms. The statute provides that children's programs in special education are to be evaluated periodically and that each child in special education who can benefit from it, be mainstreamed, i.e., attend conventional classes.

Compliance at local district level is to be achieved through two procedural guarantees: the mandated Individualized Education Program (or IEP) Meeting and the existence of due process safeguards. The Individualized Education Program or IEP meeting involves administrators, teachers, parents, the child when appropriate, attorneys or advocates representing parents. The IEP document which is signed by parents and others attending,is to have a specific content: basic assessment information, long range goals, specific services needed, description of extent child can be mainstreamed, date of placement in program, rationale for placement, list of individuals responsible for implementation of IEP, criteria which will be used to evaluate success of IEP. The IEP is to guarantee that all relevant parties, including parents, participate in the decision-making process and that this agreement be in writing. Each time a child is assigned in or out of special education, an IEP takes place.

In addition due process safeguards are provided to the parents and child. These include formal written notices of actions, descriptions and explanations of actions taken, descriptions of assessment procedures used. These are to be provided to parents in their native language and the school is responsible to insure that parents understand the communication when it is translated. They also include appeal procedures whereby parents have access to the child's record, have the right to ask for a panel of three impartial experts (one selected by parents, one by district, one by the experts themselves). The panel is to be informal but parents have the right to be accompanied by counsel and receive a verbatim record of the hearing and can compel the attendance of witness, introduce evidence and cross-examine witnesses.

In California, subsequent appeals go to the State Superintendent of Public Instruction and ultimately to the courts.

Within districts, arrangements for handling these procedures differ depending on the organizational arrangements for special education. Generally large districts may have many different administrative units handling different disabilities: speech impaired, hard of hearing, visually impaired, emotionally disturbed, mildly mentally retarded, trainable mentally retarded, orthopedically handicapped, deaf, blind and special learning disabilities. In smaller districts fewer special services may be available. But in general the mandate to have students' referral and placement into or out of special education programs requires participation of administrators - i.e., principals, teachers, psychologists and other evaluators, counsellors and experts in the disability area. Lawyers may be involved in the initial meeting but more often come into action when parents, for one reason or another, seek redress for what they consider unacceptable placement.

Implicit Assumptions of PL 94-142

The statute assumes that it is possible to pursue several different objectives simultaneously; it assumes that obliging districts to provide special education to children previously excluded can be pursued without detriment to the objective of assuring a fair assessment to all or to the objective of mainstreaming. This, as we shall see, can be a problem.

The statute deliberately focuses on parents to motivate implementation. It adopts the generally accepted notion that there need be someone to prod districts into implementation. In the absence of strong monitoring by state or federal agencies, parents are the logical agents of change (Kirp et al, 1974, p. 71). To be sure, the act's regulations include provisions for site visits, but these cannot deal with day to day implementation.

Therefore the implementation design focuses on parents. The notification requirement, the procedures of the IEP, and the appeal process are all geared to allow parents a strong voice, strong enough to create the necessary impetus for implementation. The underlying assumption, of course, is that parents are motivated, capable and have the necessary resources to act as expected. This, again, may be an erroneous assumption.

The legislation assumes that districts can easily reach agreements with parents regarding the provision of necessary service. Since unavailable services are to be provided by having districts reimburse parents for private services, the opportunity for conflicts regarding district capability or child needs was probably underestimated.

The legislation also assumes that the goal of mainstreaming will be accepted by professionals in the districts. But in practice mainstreaming is acceptable and encouraged as long as the students involved are not too different from those in conventional classes, that is, as long as the handicapped competency fits within range of normal children. This kind of mainstreaming might be referred to as a "redefinition of handicap" and is necessarily marginal. It may involve large numbers of students when wrong classifications have been used but otherwise is not too significant. Beyond redefinition, mainstreaming will be undertaken when and if close cooperation and <u>trust</u> can be maintained between regular classroom teachers and special education teachers and other professionals who will help the conventional teacher. The law assumes that close cooperation exists and that the law itself does nothing to deter such cooperation.

To summarize, this law uses process controls to pursue certain objectives. The law expects parents to exercise leverage on districts and tends to underplay

the role of district professionals. While districts receive federal and state funding, strong negative sanctions can be exercised by parents who are able to complain and have ultimate access to the courts.

But the handling of handicapped children is clearly a learning process, where learning how to do is most significant. It is the kind of situation where experts would like to say things like: "Well we are not sure what might work best: in this case we would like to suggest that this or that might be tried."

Some of the approaches that might be best for a child might be done in the school and some might be done out of school. The education of the handicapped is clearly an extreme case in education where cooperation between the family, the child, and the school is important. It also implies use of talent that may be out of the school. As we shall now see these assumptions about the potential role of parents, the nature of district/parent conflicts and the existence of internal professional cooperation were not realistic and many pitfalls were encountered in the implementation of the law.

Pitfalls

Are parents motivated, capable and active? Yes and no. Some parents are and some are not. Parent education, wealth, social class and mental health make a difference. Some parents are very involved with their handicapped children; some are not. The extent of handicap also makes a difference. Parents of near normal children are less aware and less involved in the child's deficiency than parents of children with a serious or crippling disability.

Are parents aware of the law and able to intervene? Again important differences exist across parents and across districts. In some districts

many parents are well-informed and well-organized, and legal talent is readily available. In other districts parents are less aware of the law, are not organized, and do not have ready access to legal or even other experts. Therefore, the interventions of parents are not consistent or sustained.

What kinds of legal conflicts are generated between parents and districts? One might assume that some parents might object to school classification or even dislike teachers but in practice most of the legal conflicts between parents and districts center around the issue of reimbursement for private services. School administrators are quick to learn not to recommend specialized services the district cannot provide since each time this happens the district can incur additional (and often high) expenditures. Some active parents, who have used or heard of private services, use the law to receive reimbursement for such services. When legal talent is readily available these parents exercise leverage on the schools. In addition third party interests are generated. Outside experts or private institutions handling handicapped children are not uninterested bystanders. In some instances they have been providing services to parents who were affluent enough to obtain them. They can now supply services to those parents who were not able to afford to use them before. In any case, they have a stake in getting children labelled so that placement will be outside the schools. They can and do exercise pressure on parents.

In districts where parents of handicapped children are organized, where there has been a history of legal interventions and where districts already spend considerable sums for placement in private services, the system of R & P operates strongly against such referrals: unless there is

obvious danger or impossibility to do otherwise, school administrators, teachers, and experts will be careful to avoid recommendations that lead to such placement or services. Where we might assume that children in need of special services should have a right to them, we have a system of sanctions that tends to reduce the propensity of districts to make certain needed referrals. Furthermore, those parents who respond to external pressures and perceive the law as a means for placing their child in private schools at district expenses and who agressively confront the district in the IEP and through appeals and court cases, are shifting the intent of the due process protections: so while the appeals procedure may have been conceived to protect the child from incorrect classification, they tend to be used to resolve allocative disputes regarding outside services.

What about cooperation between special educators and classroom teachers? Obviously we can expect to find differences between districts. But, in general, cooperation between special educators and conventional classroom teachers is not automatic. In most districts there is a long tradition of bureaucratic separation whereby special education is a department quite separate and some distance from conventional classrooms. Cooperation between conventional classroom teachers and special educators traditionally takes place at the time of referral. Each maintains domain autonomy and independence. Therefore, mainstreaming is a major innovation. To do so when parents can exercise strong leverage complicates matters. We can easily understand that there will be less cooperation between regular classroom teachers and special education teachers and other experts in those districts where the threat of legal conflict is high. Since referrals and transfers in and out of special education programs imply additional burdens to some teachers and since legal conflicts

are inevitably time consuming and threatening, we can understand that such conflicts are bound to generate internal tensions, such that there might not exist necessary trust between the members of a potential team serving the child. Here we can expect to find that people are more concerned with protecting their position than in attempting to solve problems. Teachers may spend more time making sure that all the necessary forms are properly filled than in addressing the special needs of children. These patterns carry over to experiments or any other endeavor which is perceived to be difficult and breaks with conventional ways of handling children. We can therefore expect to find more lip service being paid to mainstreaming than actual implementation.

We can also expect far less effective cooperation between school and parents in these same high conflict districts. Here, what should or could be a cooperative endeavor becomes open warfare. The fact that some parents can and do play a legal role, rapidly places most parents in a perceived adversary relationship. Even if belligerent parents are only a fraction of the total, the defensive strategies of the district affect all parents. Thus in large urban districts where we can always expect to find a few aggressive parents and many others who are poorly educated, unaware of the law, etc., the adversary relationships generated by some parents means that these other parents are also treated cautiously and do not get much help: Where it was assumed that the rights of children should be protected through a procedure called an IEP we have a procedure that can easily be converted into an adversary proceeding. Parents who understand little about the law and the procedure will not receive much help during these adversary meetings. They will be told to sign a form and we can even expect that many IEP reports will be routinely written in a legalistic language less designed to address the problems of the child than to defend the district against potential attack. Some

parents will not even bother and will not respond to district attempts to attend the mere formality of an IEP.

To these implementation pitfalls we need add a different kind: PL 94-142 is not the only law on the books that affects special education. The actual implementation of some of the objectives of this statute may sometimes result from other statutes or even from school administrators' perceptions of the broader political context. For example, PL 94-142 is not the only statute designed to avoid arbitrary classification and minority streaming into special education. Some states have established permissible quotas, whereby the percentage of minority enrollments in special education cannot exceed by some figure total minority enrollment in districts without eliciting some official justification. Moreover, minority sensitivity to such streaming makes it a politically delicate issue. Districts are increasingly careful not to give the appearance of using special education to resolve ethnic problems. Therefore the fact that minority enrollments in special education does go down does not necessarily mean that PL 94-142 is successful. It simply means that other rules and regulations based on different control point strategies do have an impact.

Implementation Patterns

The implementation of PL 94-142 is particularly interesting because two distinct patterns of implementation are evolving and these two patterns permit us to observe directly how process controls can distort service delivery.

First we have districts where there are already considerable legal conflicts. These will tend to be districts in urban or close suburban areas where some parents of handicapped children are informed and organized, many legal firms are interested or even specialize in these cases, many outside experts are available and private schools have a stake in placement decisions.

These we label legal-regulatory districts. Here we expect fo find that district defensive strategies play an important role and distort the process.

Second, we have districts where legal conflict has not taken place. These districts tend to be in rural areas or in distant suburbs. Even if parents are organized, they do not have ready access to legal talent and the due process remedies of the law have simply not been used. These districts we label professional to distinguish them from legal-regulatory ones. Here implementation results more from internal cooperative decisions than from pressures from parents.

Why there might be such differences in the level of conflict across districts has to do, in part, with the perceived quality of service and in part with perceived alternatives. Parents will not initiate conflicts regarding placement when they are satisfied. Some districts with adequate resources manage to satisfy most parents. Parents will not initiate conflicts if they believe that nothing will come out of it. This will happen more often if they are not organized, have little legal information and have no knowledge or even access to alternative private facilities.

But these differences have consequences for implementation. In legal regulatory districts, some of the patterns we have already described take place: the system of R&P is activated mostly as sanctions. These districts are involved in many fair hearings, appeals and legal suits in the courts. Some parents attend the IEP accompanied by their own experts and even by counsel. They do not come to the schools to seek help, they come in an adversary role to establish their rights and those of their children.

Other parents are less able or unwilling to play the role intended for them. Considerable district time and effort goes into seeking them out; getting them to agree to sign what documents are called for.

In these districts every effort is made to expedite the IEP. To the extent possible the meeting is a signature gathering exercise. The IEP document remains incomplete or imprecise to protect internal discretion. There is careful adherence to paper work. These districts take great care to establish a set of forms for referral, evaluation, processing, etc., and spend resources to train teachers to know the criteria needed to select, refer, process, and evaluate handicapped children so that the forms will be properly filled out.

Cautious behavior prevails regarding external cooperation. School experts are careful not to suggest that needed expert help is available in private schools since any such suggestions may activate the system of R&P--i.e., parents can and do ask the school to pay for such services. Therefore there is a strong tendency to diagnose to fit school capabilities. Obviously school experts, like all experts, do not obfuscate evident deficiencies, but in gray areas of doubt, school experts tend to fit the child's problem to known school capability.

Meanwhile, some parents are exposed to other sources of advice. Outside experts tend to focus on the child's problem and on a more general or universal view of remedial capability. These parents tend to distrust school diagnosis and are further motivated to seek placement in private institutions, thus accentuating external threat on the district.

In these districts teachers and school experts are hampered in their ability to cooperate among themselves. Each party is careful to avoid blame for possible negative outcomes and therefore seeks to control the situation. Faced with potential conflict between conventional teachers and special educators and other experts, principals and main office administrators tend to avoid approaches that have to rely heavily on their close cooperation. Since

mainstreaming requires close cooperation between classroom teachers, experts and aides, we can therefore assume that in these districts the tendency will be away from mainstreaming while paying lip service attention to its goals.

Since sampling of teacher or expert behavior cannot be carried out on a daily basis, it is doubtful that the protections intended in the law can be implemented. In other words, the appeal procedures will not be used to deal with actual treatment. Instead the appeal procedures will tend to be used by disassociating parents seeking to obtain reimbursement for services or placement in the private sector.

Meanwhile, the protective strategies engendered by these threats mean that considerable and significant portions of teacher and expert time are spent in procedural activities, i.e., filling forms, writing required reports, sending notifications, attending IEPs and fair hearing meetings. This means a reduction in overall district capability to meet the needs of handicapped children.

In professional districts, the system of R&P intended in the law is not activated, therefore the threat of legal intervention is not present. Compliance with the law means accommodation based on district capability.

To be sure there will be compliance with some of the paper work, procedures will be established to insure that the IEP meetings take place and, by and large, district capability, teacher inclination and the availability of expert talent will determine how the law is implemented. One might expect that when expert talent is scarce and resources few, the districts will still tend to group children with disabilities and limit mainstreaming to a few token instances (such as having disabled children eat with normal children in the same cafeteria). When expert talent is readily available and the district has considerable resources, we can expect more experimentation with new delivery systems. Children with certain disabilities are placed in classrooms,

itinerant experts move from classroom to classroom, specially trained aides help those children needing on-site help, remedial help is provided out of school, in home, etc. That kind of district implementation takes place simply because the resources and commitment are present and risk-taking is not inhibited by the fear of legal interventions and costly payments for private services.

The contrast between legal regulatory and professional districts is most evident in the running of IEP meetings. Christine Hassell reports preliminary findings based on the observation of 18 IEP meetings in districts classified as professional (Hassell 1980). In both kinds of district the average length of time of the IEP meeting was about identical averaging 41.2 minutes in legal regulatory and 43.7 minutes in professional districts. But in legal regulatory districts 55% of that time is spent purely on matters having to do with elaborating the necessary forms whereas only 11% of the time is spent on forms in professional districts. She also reports that IEPs in professional districts are twice as much oriented to the child's problem than in legal regulatory districts—as measured by topics covered, content and involvement of teachers and parents. Many more individuals participate in the IEP in legal regulatory districts: 7.05 versus 3.8 in professional districts—suggesting both the fact that more talent is perceived to be needed in legal regulatory districts and that more talent is available--particularly on the parents' side of the table.

These are very preliminary findings and research is still going on. But they already suggest that all is not well with the implementation of PL 94-142. It is suggestive or even disturbing that the IEP

meetings which were supposed to be a central decision point in the implementation of the law are run in such different manners and differ remarkedly in content. To be sure, the IEP is only one episode in the implementation of the law but the fact defensive strategies play such an important role in legal regulatory IEPs implies that they probably play an important role in other aspects of service delivery.

Implications for the Three Objectives

Given two different types if implementation patterns how do these influence achievement of the different objectives of the act? Obviously certain tasks are easier to achieve than others and also, districts will be more motivated to achieve those tasks where compliance can be more easily monitored.

As we saw, the first goal of the statute is to provide services to those children not receiving them at present. Districts are expected to identify this target population. Compliance can be monitored and the task of identifying previously excluded children is relatively straightforward if sufficient resources are allocated. Most districts can therefore be expected to identify and reach this client population and early evidence confirms this (Kirp et al,1974 p.68). But some differences should be expected between legal regulatory and professional districts. In the former, sooner or later, there will be a realization that there is a high probability that handicapped children not in the public schools include a higher percentage of cases requiring special treatment, and that the districts can incur high costs when they have to reimburse parents for private education or services. Therefore, while identification may take place, reaching and dealing with these parents will be undertaken

cautiously. Every effort will be made to reduce the threat of legal entanglement. In these districts the tendancy will be to end systematic searches or not to use the data unless obligated to by a monitoring agency or an organized group of parents. Selective use of search information will take place as schools seek to enroll those children for whom they have a district capability: there will be a tendency to reach those parents that can be served and to avoid those for whom no service is available.

In professional districts systematic searches are not perceived to be a potential danger but districts are also cautious not to acquire charges they cannot handle. We can therefore expect that the normal tendency is to seek out children that can be served and to avoid, disregard or kindly discourage, those whose problems are clearly beyond district capabilities.

Empirical evidence of such patterns are suggested in a current evaluation of the implementation of PL 94-142. It indicates that most of the districts surveyed in the evaluation do not find many new cases as a result of searches. Most referrals to special education are done by teachers in conventional classrooms out of the population already enrolled in the schools (Stanford Research Institute 1980).

These considerations and preliminary evidence suggest that the goal of identifying children previously excluded is easily implemented when enforcement is present. But acting on the information is another matter.

The second goal is to provide safeguards on the arbitrary labelling of children. Here we need to distinguish between effects of PL 94-142

and other statutes. When there is strong political pressure and language to limit minority enrollment in special education, drops of excess enrollments can be expected in both kinds of districts. Quotas on enrollments are output measures and can be easily monitored. When minority political strength is present, the system of R & P is activated. Results are achieved.

But differences will take place between the two kinds of districts when it comes to the use of evaluation instruments and the matching of children's performance with official criteria for referral. Criteria for placement in special education programs differ from state to state, but the degree of professional discretion as to the choice of instrument and how to interpret results will vary between the two kinds of districts. In the legal regulatory district much greater attention is given to formalizing procedures and forms. Teachers and other experts are carefully trained in knowing the procedures and in reducing discretion. Routine is encouraged which means that difficult cases that do not fit well with established criteria will tend to be poorly attended to. In contrast, professional districts can be expected to be more flexible, better able to handle difficult cases for which they have the capability of providing services.

But, in general, the implementation of this goal cannot be effectively monitored. To be sure, gross overall statistical controls can be effective in reducing excessive minority enrollments in special education. But whether the right kind of program is provided to the right child is a professional matter and no procedural controls are to alter this fact. Therefore, the conflicts generated by the statute may be considered a net negative effect since these conflicts tend to bring

about dysfunctional protective strategies which tend to reduce professional discretion.

Moreover, we need to remember that there is a difference between the IEP and what happens to the child. Parents may be vocal and come to the IEP with all the experts in the world but they cannot sample daily staff behavior. Implementation takes place on a daily basis away from parents and their impact is, even when they are capable of considerable clout, still very limited indeed.

The third goal--the educational goal of mainstreaming or of providing the least restrictive education is also difficult to monitor. Therefore implementation is bound to be limited. Some apparent results may be emphasized by districts who have relabelled some children and sent them back to conventional classrooms. Otherwise real efforts at cooperation between classroom teachers and special educators will only take place when sufficient trust exists and as we saw, such trust cannot easily flourish in districts under excessive external threat. We would therefore expect more experimentation and more sincere attempts to deal with the spirit of the law in professional districts while we would expect legal regulatory districts to go through the motions (our example of having special education children eat in the same cafeteria) but not the spirit of the law.

Conclusions

PL 94-142 is still a new law. Its implementation is beginning. This paper suggests a number of pitfalls. Early evidence seems to confirm that some of these problems are real. Obviously more time and more evaluative research is needed before one may feel confident about the reality content of our more pessimistic assessments.

Some conclusions can nevertheless be sketched out for their policy implication. These have to do with the choice of control points and the choice of system of R & P.

As we saw, PL 94-142 relies on process controls and we have to ask about the wisdom of relying on procedures to achieve what procedures cannot achieve. Our examples are particularly relevant since they show that certain goals of the act are amenable to output controls when these exist: the goal of protecting minority children from excessive incorrect labelling is obviously amenable to routine output controls. But, the goal of mainstreaming or of insuring an adequate education is not amenable to either outputs or process rules. They depend on input controls, namely on the good will and intentions of the professionals that provide the service. We therefore must pay far more attention to the needs, rewards, career goals and status of professional staffs. PL 94-142 does not go far enough in that respect. It calls for short-term training but does not suggest why short-term training should be sufficient or might even be implemented. There is evidence it is not (Bird & Gansneder 1979). One lesson, therefore is simple: implementation always requires two components 1) those who are to act need to learn how to act; 2) there need exist effective incentives to motivate them to act.

This example also illustrates the potential societal costs of negative sanctions. Negative sanctions generate expensive defensive strategies. Any bureaucracy can defend itself and resist threats. But in so doing it uses resources that are intended for other purposes. It is revealing that in legal regulatory districts a significant portion of teacher or expert time goes into paper pushing. This is wasted motion. It raises the issue of the choice of an appropriate linkage. What kind of

monitoring is possible or desirable? When is it desirable to use consumers to insure compliance? When is it desirable to use outside inspectors and when are third parties, i.e. other professionals preferable?

Some of the relevant dimensions here include: 1) the extent of distortion the linkage creates 2) the consistency, quality and motivation of the outside monitoring 3) the expertise required. The lesson seems to be that parents are not the best choice here. To be sure, they can be important but the distortions caused by their interventions are not desirable. A second lesson therefore is that "outsiders" can be used effectively when 1) their efforts complement those of insiders, or 2) their efforts, while in conflict with insiders, are nevertheless predictable and can have the intended impact.

This discussion also suggests that it is useful to emphasize and discuss the concept of excessive control. The pursuit of control objectives generates costs that make them less desirable, but we have no methodology to weigh trade off. At best we decry the unforeseen consequences of interventions without being able to cost out other alternatives. We can suggest shifts in other directions and insist that process rules be substituted by output controls only to discover that these are also amenable to distortion and manipulation. At some point we have to ask: are controls needed? will we achieve more if we intervene? can we justify doing less?

What policy implication can we derive from this? Obviously our main theme has been about the choice of desirable and undesirable controls. Some goals and some tasks can be controlled at output, input and process. But tasks that require considerable professional inputs are <u>not</u> amenable to

that kind of control. They require far more attention to what motivates professional behavior, to the incentives needed to improve professional role playing, and to the insitutions needed to raise the level of professional ethics. In this case this means that one should find out what kind of assistance parents and children need if they are to better play their role. They probably need help to understand about the nature of the handicap. They probably could benefit from some assistance, particularly when economic or other factors impede their ability to deal with the problem.

One might also specify the kind of long-term training teachers and experts might receive to implement mainstreaming. One might specify the nature of support services and provide both short-term and long-term assistance. All this with the recognition that there are many unknowns about "mainstreaming" and that much learning need take place.

One could also specify the incentives that might insure that teachers and experts are motivated to implement the statute.

Lastly and importantly one might specify the kind of peer review that might be used to review compliance and suggest future courses of action.

Such an approach would be more oriented to the role professions can and should play in the implementation of this kind of legislation.

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